

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of

Implementation of the Local Competition  
Provisions in the Telecommunications Act  
of 1996

) MAY 26 1999  
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) FEDERAL COMMUNICATIONS COMMISSION  
) OFFICE OF THE SECRETARY  
) CC Docket No. 96-98  
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**COMMENTS OF THE  
INFORMATION TECHNOLOGY INDUSTRY COUNCIL**

**INTRODUCTION**

The Information Technology Industry Council ("ITI") is the leading trade association of manufacturers and vendors of computers, consumer electronics, computing and information products, and services. The members of ITI operate in briskly competitive markets that have prompted the introduction of countless innovative products, stimulated technological progress, and benefited consumers through greater choice and lower prices. Based on its members' collective experience in competitive markets, ITI urges the Commission to continue its efforts to remove barriers to competition in telecommunications markets, which will in turn stimulate investment and spur technological innovation, while reducing prices, and increasing consumer choice in local exchange markets.

In particular, ITI urges the Commission to adopt rules and policies in this proceeding that will facilitate the widespread deployment and competitive

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provision of advanced broadband communication services to consumers. The Commission's rules should reduce or remove impediments to the rapid and efficient rollout of broadband services by both incumbent local exchange carriers ("ILECs") and competitive entrants. Accordingly, ITI has focused these comments on those unbundled network element ("UNE") issues raised by the second Notice of Proposed Rulemaking in this docket<sup>1</sup> ("*Second NPRM*") that will likely have the greatest impact on the deployment of advanced services.

As detailed below, the Commission should facilitate the rapid development of a competitive market for broadband consumer services by retaining a loop UNE and permitting ILECs to provide advanced services with no requirement to offer the associated electronics as a UNE. Under the unbundling standard in Section 251(d)(2), access to the ILECs' advanced services electronics need not be required because the ability of competitors to offer advanced services would not be impaired without it, due to the operation of the Commission's co-location, interconnection, and unbundling rules. Moreover, unwarranted unbundling obligations for the electronics associated with advanced services would create economic disincentives for the ILECs to deploy advanced services. By eliminating such regulatory disincentives, and removing barriers to competitive entry by new providers, the Commission can ensure the rapid deployment of the advanced broadband services consumers need for cost-efficient, high-speed access to information services.

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<sup>1</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Further Notice of Proposed Rulemaking, FCC No. 99-70, (rel. Apr. 16, 1999), ("*Second NPRM*").

I. GIVEN CURRENT COMPETITIVE CONDITIONS IN LOCAL EXCHANGE MARKETS, A LOCAL LOOP UNE IS REQUIRED UNDER ANY INTERPRETATION OF THE STATUTORY STANDARD.

As the Commission itself has recognized, the existing telephone network, with a line running into virtually every home and business, provides an unparalleled conduit through which consumers can gain access not only to basic POTS but to other networks and information services, including Internet access.<sup>2</sup> Until recently, the ubiquitous copper phone lines comprising “the last mile” from the ILEC’s central office to the end-user were technically unsuitable for carrying the broadband signals of such services as graphic-rich Internet sites, interactive video, or high-speed data communications. The advent of broadband technologies like xDSL,<sup>3</sup> however, has enabled providers of broadband services to use existing copper loops to interconnect low volume and residential consumers with an array of emerging packet services.<sup>4</sup>

xDSL, and services like it, greatly reduce the cost of providing ubiquitous broadband services by allowing both new and incumbent providers of advanced services to use existing local loops. Moreover, advanced broadband technologies like xDSL enable data services and basic voice service to be transmitted over the same local loop facility, dramatically increasing the efficiencies of local network plant. Because it enables new providers of basic

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<sup>2</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Ability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC No. 99-48, (rel. Mar. 31, 1999) at ¶ 9 (“*Advanced Services First Report and Order*”).

<sup>3</sup> For a general description of ADSL technology, see *The ADSL Forum General F.A.Q.’s*, (visited on May 21, 1999) <[http://www.adsl.com/adsl\\_forum.html](http://www.adsl.com/adsl_forum.html)>.

<sup>4</sup> *Advanced Services First Report and Order*, *supra* note 2, at ¶ 5.

service and advanced broadband services to enter local markets more quickly and efficiently, access to a loop UNE is a crucial prerequisite to the development of a competitive marketplace for both advanced broadband services and traditional wireline POTS if alternative services and facilities are not available.

The Commission properly concluded in its *Advanced Services Order*<sup>5</sup> that ILECs must provide conditioned, unbundled loops capable of transporting high-speed digital signals. Without access to such loops, new providers of broadband services would be forced to build unnecessarily duplicative facilities or invest in costly upgrades and extensions of existing alternative facilities, if available. Few new entrants would be able to attract the mammoth capital resources necessary to duplicate the over 170 million local lines in service nation-wide.<sup>6</sup> Even if new entrants were able and willing to commit the needed resources to create an alternative public network, competition would be substantially delayed pending such construction. Worse yet, the new construction would needlessly duplicate an already underutilized network and exponentially increase the cost and risk of entry into the local services market.

ITI recognizes that the Supreme Court's decision in *AT&T Corp. v. Iowa Utilities Board*<sup>7</sup> requires the Commission to revisit its interpretation of the "necessary" and "impair" standards in § 251(d)(2) of the Act and then apply its

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<sup>5</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 1998 FCC Lexis 4127, at \*54 - \*57.

<sup>6</sup> FCC Loc. Competition Rep., Dec. 1998, Table 3.1 and accompanying text, *citing* Local Competition Surveys at <[http://www.fcc.gov/ccb/local\\_competition](http://www.fcc.gov/ccb/local_competition)>.

<sup>7</sup> 119 S. Ct. 721 (1999).

revised interpretation to identify those network elements that ILECs must provide on an unbundled basis. The Commission has proposed a range of possible standards in the *Second NPRM*.<sup>8</sup> Under any of these standards, however, the creation of meaningful competition in local markets will require access to existing local loops for the foreseeable future, given current marketplace conditions and CLEC entry strategies.<sup>9</sup> ITI agrees with the Commission's expectation<sup>10</sup> and the view expressed by Chairman Kennard that, under any rational application of the "necessary" and "impair" standards, the local loop must be included among the network elements to which CLECs obtain access.<sup>11</sup> Rather than belabor the obvious, ITI will defer to the pleadings advocating a loop UNE submitted by the CLECs and other aspiring market entrants who have actual marketplace experience in local exchange markets and technical expertise regarding the dearth of substitutable services and facilities.

II. GIVEN THE COMMISSION'S CO-LOCATION, INTERCONNECTION, AND LOOP UNBUNDLING RULES, NO UNE IS REQUIRED FOR ADVANCED SERVICES ELECTRONICS UNDER ANY REASONABLE INTERPRETATION OF THE STATUTORY STANDARD.

The Commission has previously concluded that the facilities and equipment used to provide advanced services are network elements within the

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<sup>8</sup> *Second NPRM* at ¶¶ 24-28.

<sup>9</sup> See, e.g., FCC Loc. Competition Rep., *supra* note 6, Tables 3.3, 3.4, and explanatory text at 18-19 (reporting that very few voice grade lines have been provided to CLECs as UNE loops).

<sup>10</sup> *Second NPRM* at ¶ 32.

<sup>11</sup> Separate Statement of Chairman William E. Kennard, in *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Further Notice of Proposed Rulemaking, FCC 99-70, (rel. Apr. 16, 1999), at 1.

meaning of § 251(c) of the Act.<sup>12</sup> As a result, ILECs are subject to the unbundling requirements in § 251(d)(2)(B), unless the Commission concludes—pursuant to the interpretation of that section adopted in this proceeding—that the ability of advanced services carriers to provide their services would not be impaired if they had no unbundled access to those network elements.

ITI believes that under any of the standards set forth in the Second NPRM an ILEC should not be required to establish as a UNE the electronics associated with advanced services that use local loops (such as xDSL) where the ILEC complies with its co-location, interconnection, and loop unbundling obligations.

For some network elements, particularly the local loop, ILECs may have a valuable "legacy advantage" as the historical monopoly provider of the network. Competition from new entrants would be substantially delayed, if not foreclosed, if the Commission established no UNEs for these elements and instead required new entrants to replicate certain of the capital-intensive and geographically dispersed network elements used to provide traditional POTS.

By contrast, however, ILECs have no legacy advantage with respect to the installation and use of advanced services electronics such as Digital Subscriber Line Access Multiplexers ("DSLAMs"). Most advanced services technologies, particularly xDSL, have developed only recently and ILECs typically did not deploy them in their networks before the passage of the market-opening requirements of the 1996 Act. Thus, in order to provide advanced services, the

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<sup>12</sup> *Advanced Services Order*, *supra* note 5, at ¶ 57.

ILECs must now acquire and install new equipment just like their advanced services competitors.

Moreover, the ILECs' competitors can acquire and install equipment for advanced services on a relatively equal footing with the ILECs. The relevant electronic equipment is produced by numerous vendors, establishing a competitive equipment market that can effectively discipline prices, provisioning, and other service terms for the foreseeable future.<sup>13</sup> As a general matter, the co-location of DSLAMs in an ILEC central office is not an expensive, capital intensive exercise.<sup>14</sup> And competitive entrants in the advanced services market typically have substantial market capitalization and the requisite financial resources to purchase and install the required electronics.<sup>15</sup> Thus, the equipment is readily and practically available to ILECs and competitors alike.

Accordingly, where an ILEC complies with its co-location, interconnection, and loop unbundling obligations, CLECs would face no impairment to their provision of advanced services other than an investment of the same time and money required of ILECs who purchase and install the equipment associated

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<sup>13</sup> See Margie Semilof, *DSL Products Vie for Place at SuperComm Demo*, <http://www.techweb.com/wire/story/TWB9990521S0008> (identifying xDSL products by Cisco, 3Com, and Nortel); <[http://www.adsl.com/adsl\\_vendors.html](http://www.adsl.com/adsl_vendors.html)> (providing a list of vendors in the "ADSL Food Chain").

<sup>14</sup> Jeffrey Owen Jones, *Shared Contempt—Despite Strong Earnings, Investors Forsake Dependable Bells for High Profile Upstarts*, May 17, 1999, <<http://www.techweb.com/se/directlink.cgi?TLC19990517S0029>> (visited May 22, 1999) (estimating co-location to cost \$30,000-\$80,000 per central office).

<sup>15</sup> See, e.g., *Big Business*, <<http://www.techweb.com/se/directlink.cgi?TLC19990125S0043>> (visited on May 21, 1999) (noting that CLECs' current market capitalization is \$20 billion); *CLECs Ring Bells for Venture Capitalists*, Mar. 9, 1998, (visited May 21, 1999) <<http://www.zdnet.com/intweek/supplements/clec/chart.html>> (CLECs raised more than \$200 million in venture funding in 1997 alone).

with the service. The quality of service a CLEC can offer, without access to the ILEC's advanced services electronics, will not decline nor will the cost of providing the service rise. At the same time, the elimination of unbundling obligations for ILEC advanced service equipment would encourage ILECs to deploy advanced services technologies expeditiously, allowing consumers to obtain competitive access to the services much sooner than if the ILECs are constrained by unnecessary unbundling requirements.

Although CLECs do not require access to incumbents' electronics, they will need end office co-location, loop interconnection, and access to conditioned, unbundled loops. For example, because xDSL services are delivered by installing and interconnecting electronic equipment on either end of an existing copper loop, the rapid deployment of this technology for consumer services on a competitive basis is particularly dependent upon reasonable and timely access to end office co-location space and properly conditioned loops. As the Commission has observed, consumer demand for advanced services like xDSL is increasing rapidly and CLECs entering local markets cannot meet this new demand without adequate co-location and interconnection arrangements.<sup>16</sup> Absent such arrangements, consumers will not have a competitive array of potential providers from which to choose their advanced services.<sup>17</sup>

The Commission has already addressed the availability of adequate co-location and interconnection arrangements through its adoption of strengthened

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<sup>16</sup> *Advanced Services First Report and Order*, *supra* note 2, at ¶ 21.

<sup>17</sup> *Id.*

co-location and loop unbundling requirements in Docket No. 98-147. These requirements greatly enhance the potential for competition to develop in the advanced services market and further erode arguments for requiring ILECs to offer the electronics associated with their advanced services as UNEs. The improved co-location and loop unbundling requirements in the *Advanced Services First Report and Order*<sup>18</sup> provide CLECs with a better opportunity to enter the local market for advanced services. Because of the Commission's enhanced requirements, CLECs will be able to deploy their advanced services electronics and offer service to consumers without access to ILEC electronics.

Therefore, ITI urges the Commission to conclude, pursuant to its revised interpretation of § 251(d)(2) in this proceeding, that an ILEC who demonstrates it is in full compliance with the Commission's co-location, interconnection, and loop UNE requirements is not required to provide on an unbundled basis the electronics associated with its advanced services.

### **CONCLUSION**

The development of competitive markets for the provision of advanced services depends on the ability of competitive entrants to access consumers through the local loop. The Commission should continue to require ILECs to offer the local loop on an unbundled basis so long as no competitive alternative exists. The Commission should not, however, burden ILECs with unnecessary unbundling requirements for the electronics associated with the provision of advanced services. As long as an ILEC complies with the Commission's co-

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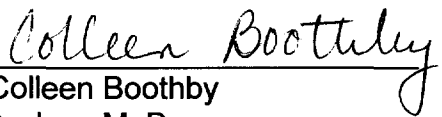
<sup>18</sup> *Advanced Services First Report Order*, *supra* note 2, at ¶¶ 25-60.

location, interconnection, and loop UNE requirements, the ILECs should not be required to provide access to their electronic equipment as a UNE. By maximizing CLEC access to the local loop and minimizing the number of network elements that incumbents must unbundle, the Commission will simultaneously reduce barriers to entry for new competitors and eliminate regulatory disincentives for the deployment of advanced services by incumbent providers.

Respectfully submitted,

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May 26, 1999

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## **Certificate of Service**

I, Anthony J. Mangino, hereby certify that true and correct copies of the preceding COMMENTS of the INFORMATION TECHNOLOGY INDUSTRY COUNCIL in CC Docket No. 96-98 were served this May 26, 1999 via hand delivery upon the following parties:

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